Supreme Court of the United States

OCTOBER TERM, 1941.

No. .....

W. D. GORDON, PETITIONER,

VS.

CECIL E. VALLEE ET AL., RESPONDENTS.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

To the Honorable Supreme Court of the United States:

Your petitioner respectfully shows:

I.

OPINIONS OF THE COURTS BELOW.

The opinion of the United States Circuit Court of Appeals for the Fifth Circuit (R. 65) is not yet reported and the opinion of the United States District Court for the Eastern District of Louisiana (R. 40) is reported in 34 Fed. Supp., page 467.

II.

JURISDICTION.

(1) The date of the judgment to be reviewed is April 23rd, 1941 (motion for rehearing overruled May 31, 1941, on page 77).

(2) Statutory provision which is believed to sustain the jurisdiction of this court is U. S. Code, Tit. 28, Sec. 347A.

(3) The trial court's decision involves a proper construction under Articles V and XIV of the Constitution of the United States. It also involves a proper construction of the effect of the Federal Interpleader Act, 28 U. S. C. A., Sec. 41—S. C. 26.

(4) The cases believed to sustain said jurisdiction are as follows:

Erie Railway Company v. *Tompkins,* 304 U. S. 64.
Lutcher & Moore Lumber Company v. *Knight,* 217 U. S. 257.
Willing v. *Binenstock,* 302 U. S. 272.

III.

STATEMENT OF THE CASE.

This has already been stated in the preceding petition, pages 1 to 3, which is hereby adopted and made a part of this brief.

ASSIGNMENTS OF ERROR.

I.

The decision of the said circuit court of appeals on the theory that the trial judge was bound to give effect to the judgments entered against Helis in the garnishment suits is erroneous because the garnishment judgments rendered in the Civil District Court in New Orleans, Louisiana, were not entitled to "full faith and credit against W. D. Gordon" who was not a party to such proceedings nor notified thereof.

II.

The Honorable Circuit Court of Appeals for the Fifth Circuit erred in affirming the judgment of the trial court directing the payment of the fund in controversy to the appellees because the assignment of the funds in question was executed and delivered in Texas by Y. D. Spell, a resident of Texas, to your petitioner, W. D. Gordon, a resident of Texas, prior to the institution of said garnishment suits in Louisiana by appellees, and the validity of such assignment as regards appellees, also residents of Texas, is determined by the laws of Texas, which holds that no notice of such assignment to the principal debtor Helis was necessary to the validity and priority thereof.

III.

The Honorable Circuit Court of Appeals erred in giving effect to the garnishment proceedings over the vested rights of your petitioner, W. D. Gordon, who was not a party thereto, thereby denying W. D. Gordon due process of law and his day in court, in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

IV.

The said circuit court of appeals erred in holding the law of the forum was applicable rather than the law where the assignment was made because the Supreme Court of Louisiana holds that where an assignment is made and all of the claimants reside in another state, the Louisiana law, though contrary to such foreign state, will not be applied because *"to extend the laws of Louisiana to a contract made between parties of a foreign state would be to give an extraterritorial application to them unwarranted by any consideration"* (italics ours).

V.

The decision of the circuit court of appeals is erroneous because it is in conflict with the decision of the Supreme Court of the United States in the case of *Armour* v. *Saunders*, 292 U. S. 191, which holds that the filing of a federal interpleader in no wise changes the vested rights of the claimants to the fund in controversy.

ARGUMENT.

(a) The first and most signal error of the United States Circuit Court of Appeals is that they held that even though W. D. Gordon was not a party to the garnishment suits the judgment based thereon cut off his rights to the garnished fund, which fund he owned before the filing of said suits by virtue of a prior assignment from the owner thereof.

(b) Secondly, said decision is clearly wrong because said court held in effect that because the garnishment suits had been filed in the Civil District Court of Louisiana, coupled with the fact that the interpleader suit was filed in Louisiana, that the law of the forum should be followed in determining the validity of the assignment, rather than the proper law, which was that of Texas where the assignment was made and by said law is held valid.

As the very basis of its decision, the court said "that he (the district judge) was bound to give effect to the judgment entered against Helis in the garnishment proceedings" (R. 67).

W. D. Gordon has not had his day in court. His vested right to his cause of action, valid when the garnishment suit was instituted, and valid when judgment was entered, has been destroyed without due process.

Judge Cardozo, in the case of *Loucks* v. *Standard Oil Company*, 224 N. Y. 99, 120 N. E. 198, says:

> "Plaintiff owns something and we help him to get it. Right of action is property. The law applying to that property, though of a distant state, becomes a part of it and controls."

Also, the decision of the said circuit court of appeals distinctly violates Articles V and XIV of the Constitution of the United States. We think it is axiomatic that no one is bound by a judgment to which he was not a party. Such has been the ruling of our courts since the old case of *Pennoyer* v. *Neff*, 24 L. Ed., p. 565, and it could not be otherwise.

The judgment in the garnishment suits not being binding on W. D. Gordon, the interpleader, suit should be determined by the application of the proper law. Admittedly, the assignment was valid in Texas when and where made and long antedated the garnishment suits. There was nothing left to attach or garnishee (*Salem Trust Co.* v. *Mfg. Finance Co.*, 68 L. Ed. 634) (Texas cases are cited on pages 14 and 15 of the original brief of petitioner). Its validity and priority in Texas being conceded, its priority over the subsequent garnishment suits should be recognized. This is not a suit where one claimant is a citizen of the forum (if such would have any force) but all interested parties have, at all times, been citizens of Texas.

Furthermore, if W. D. Gordon, the petitioner, had been a party to the garnishment suits in Louisiana, we are of the opinion that, under the authority of Richardson v. *Leavitt*, 1 La. Ann. 430, *judgment would have been in favor of W. D. Gordon. This case is hereinafter discussed* (italics ours).

The Honorable Circuit Court of Appeals relied primarily, if not solely, upon the case of *Saunders* v. *Armour Fertilizer Works*, 292 U. S. 190, in determining that the law of Louisiana and not the law of Texas was the proper law to be applied in this case (R. 67). In reaching such result, the Honorable Circuit Court of Appeals did so on one or both of two theories, to-wit:

(a) That because the interpleader suit was filed in the State of Louisiana, that the Louisiana law or the law

of the forum was the proper law; or (b) that because the garnishment suits were filed in the State of Louisiana, that the Louisiana law or the law of the forum was the proper law (R. 67).

We submit that both of said theories are unsound and in direct conflict with the holding of the Honorable Supreme Court of the United States in the case of *Saunders* v. *Armour Fertilizer Works*, above mentioned.

In said case of *Saunders* v. *Armour Fertilizer Works*, there were three principal points of law determined:

(1) That a lien attaches from the date of the filing of a garnishment suit and not from the date of judgment therein.

(2) That the filing of a federal interpleader in no wise changes the vested rights of the claimants to the fund in controversy.

(3) That the exemption laws of the State of Texas have no extraterritorial effect.

In the *Saunders* v. *Armour Fertilizer Works* case, the court protected the prior vested rights of Armour Fertilizer Works created by the running of a garnishment before the filing of the bill of interpleader, and in the case at bar, the Honorable Circuit Court of Appeals refused to protect the prior vested rights of your petitioner, W. D. Gordon. We submit that the holdings in said two cases are in direct conflict. Under the express holding of the *Saunders* v. *Armour Fertilizer Works* case, judgment should have been entered by the Honorable Circuit Court of Appeals in favor of your petitioner, W. D. Gordon, for the reason that his rights to the fund in controversy were established by a conveyance and an assignment thereof long before the filing of the garnishment suits to which he was never a party.

We submit that the validity of this assignment should be determined according to the proper law, irre-

spective of the fact that the garnishment suits and bill of interpleader were filed in Louisiana.

Petitioner contends that a contract, valid where made, is valid and enforceable everywhere (italics ours).

Bond v. *Hume*, 61 L. Ed., p. 567, holds:

> "It is obvious on the face of the pleadings as stated in certificate that the contract, the enforcement of which was sought, was valid under the laws of the State of New York, the place where it was entered into and where it was executed, and this validity was not and could not be affected by the laws of the State of Texas as in the nature of things, such laws could have no extraterritorial operation."

Reference is also made to *Cox* v. *U. S.*, 8 L. Ed. 359.

Pritchard v. *Union National Bank*, 91 U. S. 506, 23 L. Ed. 245.

Northern Pacific Rwy. Co. v. *Babcock*, 38 L. Ed. 961.

Respondents in error must concede that, at the time this assignment was made and delivered, they were unsecured creditors of the assignor and certainly, at such time, had no vested rights or legally established title in the subject matter of the assignment.

In *Northern Pacific Rwy. Co.* v. *Babcock*, 38 L. Ed. 958, in discussing how far the law of the forum should reach out, the Supreme Court (quoting from *Herrick* v. *Minneapolis St. Ry. Co.*, 31 Minn. 11) uses the following language:

> "But it by no means follows that, because the statute of one state differs from the law of another state, therefore, it would be held contrary to the policy of the laws of the latter state. Every day our courts are enforcing rights under foreign contracts where the *lex loci contractus* and the *lex fori* are altogether different, and yet we construe these contracts and enforce rights under them according to their force and effect under the laws of the state

where made. To justify a court in refusing to enforce a right of action which accrued under the law of another state, because against the policy of our laws, it must appear that it is against good morals or natural justice, or that, for some other such reason, the enforcement of it would be prejudicial to the general interests of our own citizens."

We further submit there is nothing in the facts surrounding the assignment or testing its validity, the enforcement of which would be prejudicial to the general interest of any citizens of Louisiana, none being interested, nor can the decision of the circuit court of appeals be justified because the State of Louisiana has only an incidental interest in the subject matter of this suit. On this phase of the case, we cite *Hartford Accident & Insurance Company* v. *Delta Pine Land Company*, 78 L. Ed. 1178, wherein the court uses this language:

"Conceding that ordinarily a state may prohibit performance within its borders of even a contract validly made elsewhere, if the performance would violate its laws (*Home Ins. Co.* v. *Dick, supra*, 281 U. S. 408, 74 L. Ed. 933, 50 S. Ct. 388, 74 A. L. R. 701), it may not, on grounds of policy, ignore a right which has lawfully vested elsewhere, if, as here, the interest of the forum has but slight connection with the substance of the contract obligations. Here performance at most involved only the casual payment of money in Mississippi. In such a case the question ought to be regarded as a domestic one to be settled by the law of the state where the contract was made. *A legislative policy which attempts to draw to the state of the forum control over the obligations of contracts elsewhere validly consummated and to convert them for all purposes into contracts of the forum, regardless of the relative importance of the interest of the forum as contrasted with those created at the*

place of the contract conflicts with the guaranties of the fourteenth amendment" (italics ours).

When all interested parties are nonresidents, the Supreme Court of Louisiana laid down the law that they will not enforce the law of the forum.

Such was the holding of the court in *Richardson* v. *Leavitt*, 1 La. Ann. 430, wherein the court uses the following language:

> "This case arises from the conflicting claims of the plaintiffs, who are attaching creditors, and of the intervenors who assert their right to the property attached by virtue of an assignment made in their favor by the defendants, in trust for certain creditors. The assignment was made in New York where all the parties reside; and the debt on which the attachment was issued was contracted and payable in New York.
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> But by the laws of New York no such pledge exists, and the debtor is permitted to make any preference, by payment in favor of some creditors to the detriment of others. The law of New York is the law of the contract between the plaintiffs and defendants. Under the law of Louisiana, the plaintiffs have no action against the assignees, who are in possession under a legal transfer of property which was subject to no pledge, and which the defendants were permitted to dispose of in favor of any creditors they might select. To extend the laws of Louisiana to the contract made between these parties in New York would be to give an extraterritorial application to them, unwarranted by any consideration."

In connection with this brief, petitioner respectfully refers this Honorable Court to our original and supplemental brief filed in the United States Circuit Court of Appeals.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this court of its supervisory powers by granting a writ of certiorari, thereafter reviewing and reversing said decision.

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